

The

Equality

Manual



सत्यमेव जयते

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=Foreword=

The National Commission for Protection of Child Rights has received numerous complaints concerning acts of discrimination and bias pertaining to children. Further the Right of Children for Free and Compulsory Education Act (2009) has mandated that 25% of seats in private schools must be reserved for children from disadvantaged groups. This has been welcomed as a first step towards bridging the gaps between rich and poor children. The very act of studying along with their peers in the neighbourhood integrates children into a web of interaction, encouraging them to share knowledge, cultures and build a sense of oneness as Indians. Since the value of equality and inclusion is integral to India's democracy and citizenship, it was felt necessary to explain and convey the idea of equality to children through the principles of the Constitution of India, through a child friendly manual.

This manual is therefore intended to be a primer to introduce children to the term "equality", why it is an important concept and Constitutional value, and how it can be actualized in today's world. Thus 'The Equality Manual' seeks to explain the principles enshrined in the Constitution of India under Articles 14-18 by examining the substance of the provisions and their interpretation with reference to the day-to-day activities of a child.

The authors, who are all law students from the Campus Law Centre, Faculty of Law, University of Delhi, have explained each Article in easy terms and with examples to make it accessible for children. Their effort has been informed by their interactions with children in workshops, through consultations and inputs from child psychologists, and their study of the law. The manual has also been illustrated and designed by a student from NIIFT, Kangra to make it visually attractive and interesting for young readers.

The Commission hopes that children in all the schools use this manual and are informed about their Constitutional guarantees.

Shantha Sinha

=Introducing Equality=

The Right to Equality is the principle that all persons are born and created the same and are given similar rights and access to participate and develop in society.

“Equality” is one of the central values found in our Constitution. All persons are equal and therefore should be treated equally. Why are all of us equal? Because we are all human beings! Therefore, since we are all humans, we should also have equal rights and equal access to those things that enable us to lead a full and healthy life in society.

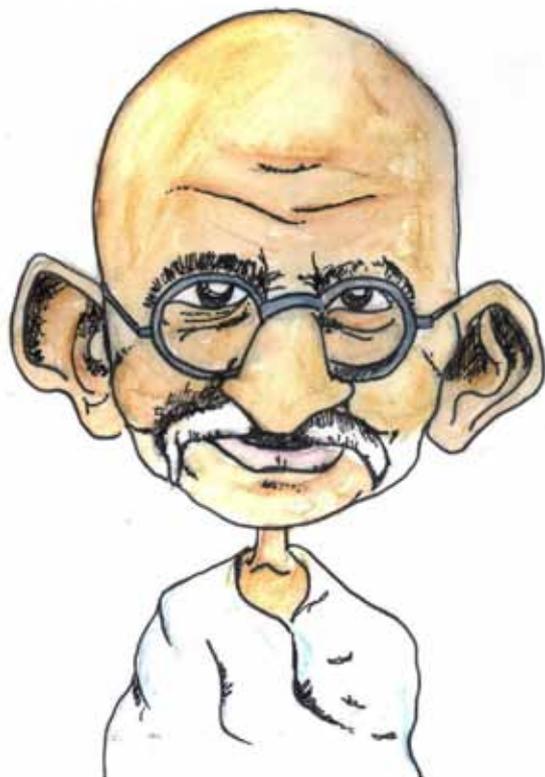
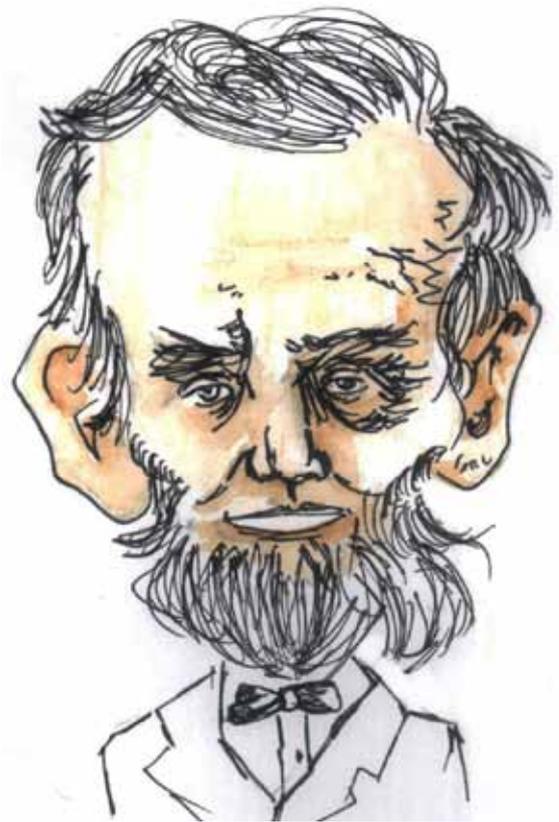
The United Nations Convention on the Rights of the Child (UNCRC) states that every State has to ensure equality among children. The UNCRC talks about equality in its Preamble as well as in Article 2. This Article of the UNCRC states that all the rights under the UNCRC must be made available to all children no matter who they are, where they live, what their parents do, what race or religion they belong to, what language they speak, whether they are boys or girls, what their culture is, whether they have a disability, or whether they are rich or poor. In India, the Right to Equality is guaranteed in our Constitution in Articles 14-18.



B.R. Ambedkar- Father of Our Constitution

The Juvenile Justice (Care and Protection of Children) Rules, 2007 also contains the ‘Principle of Equality and Non-Discrimination’ with respect to children who get into trouble with the law. All such children must be treated equally and must have equality in access, opportunity and treatment under the Act.

Throughout history, equality has been a rallying call for change. In France, people revolted against the King to be able to attain equality. In America, a civil war was fought and President Abraham Lincoln abolished slavery. Even in our own country, Mahatma Gandhi led a movement to



ensure equality for the Indian people. History is filled with inspirational stories of leaders who demanded that all citizens be given due respect and opportunity, regardless of gender, religion, caste, race, color, age and nationality and even today, the fight for equality continues in our country.

Unfortunately, we in India are still witness to a society that is very unequal. We can see that, even today, it is a society where women do not have the confidence to participate and enjoy life because the cities are unsafe, a society where caste and religion-based neighborhoods still exist, a society where people from different states face discrimination at the hands of each other and where marriage between people from different backgrounds is still frowned upon.

Therefore what does it mean to have a right to equality? Rights are powers that we all have, and which regulate relations between the State and people, and also between people. . Therefore, that we have a right to equality means, simply, that there are certain things that the State and the people must not do (also called "negative obligations,") and also that there are certain other things that the State and the people must do, (also called "positive obligations"), to ensure that the right is not violated.

This right is also a powerful tool against many forms of injustice - "discrimination", "arbitrariness" and "bias".

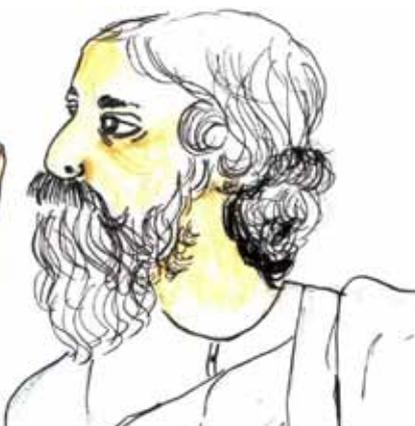
These sound like complicated words, and we will discuss them in greater detail in later parts of this manual. For now, you should know that they refer to instances we have all experienced - for example, that time that only you, and not your friend, got yelled at for something that both of you did.



While most of the Articles we are going to discuss establish rights that citizens of India can avail of, some also provide non-citizens with certain rights. For example, Article 14 is a general right for all people, while Articles 15 and 16 are specific cases of how this is applied to citizens in some "special circumstances".

Through this discussion, we must remember that understanding equality entails that we understand the uniqueness of India with a rich diversity of people, a plurality of religions, cultures, and a variety of histories.

Rabindranath Tagore speaking of this multiplicity many years ago said,



"On the sacred shores of the ocean of humanity of this India, Awaken, my heart!"

Unless we 'awaken our heart', learn to respect such differences and understand the need for recognizing our diversity, we will forever be an unequal republic.

It is therefore important for us to realise that we can only affect change and make India a country for all, and not a privileged few, if we practice equality in our everyday lives.

= Constitutionalism and Finding the Right to Equality in India =

When India overthrew the rule of the British in 1947, a remarkable course of events was set into action. It meant that India, now as an independent country, did not have to obey anyone else's orders. It was, in other words, a "sovereign" State. However, this also meant that India could now actively choose what her future would look like. And so, two hundred and seventeen men and women sat together for more than three years to decide what path should be followed. Finally, on 26 January 1950, a day that we all celebrate as Republic Day, this long process ended, and produced an extraordinary document - the Constitution of India. The reason we are calling it extraordinary is because it not only established a break from its colonial past, but also laid down a new beginning for India.



Why is the Constitution such an important document? A big reason is that, in deciding what the new India should be like, one of the ideals embraced was the idea of "constitutionalism". This means that the power of the State comes from the

Constitution, and that it cannot act in a way that goes against the values that are embodied in it. After centuries of being ruled by the British, India was very wary of allocating too much power to any authority! So it was decided that, to keep the State in check and make sure that it doesn't behave in a way that harms its citizens, all its actions should adhere to the limits laid down in the Constitution.

However, this “policeman” role is not the only thing that the Constitution does. It also lays out ideals and values that the State has to use as a kind of compass in its path forward. This was to ensure that we, as Indians, are truly going forward into a different future, and we are not going to live in a continuation of the unfair past. It laid down that the State had to, at all times, remember who it was for, and where it derived its power from - the people, you and me. So it laid down “rights” and duties” for us. These can be found in two chapters of the Constitution, Part III and Part IVA.

Part III of the Constitution of India provides us with our Fundamental Rights which are basic and essential powers guaranteed to us to ensure we fully participate and grow in society.

Part IVA of our Constitution talks about our Fundamental Duties. These are duties that all of us should abide by as citizens of India. It includes, among other things, an obligation upon us to abide by the provisions of the Constitution, to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women.

This manual will explain the Fundamental Rights that are covered within the umbrella of our Right to Equality as given in Articles 14-18, and through an understanding of the powerful and beautiful ideals embedded in it we hope to come to a better understanding of what equality is, why it is important for a society, and how we can all take steps to ensure a more equal future for all of us.

= Article 14 =

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

This right covers the socio-economic and political aspects of our everyday life ensuring that we are treated the same by the court, government and persons in positions of authority without bias or discrimination. This right attempts to ensure that we are given an opportunity to access our privileges to lead a fulfilling life and also equal protection when we are faced with troubles and liabilities.



India is a country that is governed by the "Rule of Law" which means that justice must not only be done but must also be seen to be done. The "Rule of Law" works as opposed to a "Goonda Raj" and attempts to ensure there is fairness in everyday life so that there is a healthy and just social order, a society without differences of gender, religion, caste, race, color, age and nationality.

Equality also means that in small matters of everyday life like in school, at work and at play, there must be fairness and justice, for example, equal pay for equal work. We must not be treated differently on the arbitrarily practiced "discretion", or mere whim and fancy of a person in authority.

The biggest threat to equality is when there is "arbitrariness" which means that people act without following rules, regulations and procedures. This can lead to some people being favored over others for reasons that are out of their control.

The law gives us some protections which we all have as soon as we are born. These ideas are called principles of natural justice and they include the right against bias and unfair treatment and the right to be heard and listened to before any action or judgment is passed against us.

Further one of the most important ideas connected with equality is the idea of "reasonableness", which means that when we look at a decision, it must be such that it meets the standard of the idea of freedom, the idea of life and the idea of equality and does not impinge on any of the rights promised by these three ideas promised in the Constitution. Reasonableness is a very important idea especially when deciding whose right has been affected and whose right has not.

As we mentioned in the beginning, India has been beset with deep inequalities, and because of this often people are not born equal, even though they are promised this by our Constitution. It is to remedy this inequality, that the framers of the Constitution put in provisions that promised special treatment to people who are from socially disadvantaged and economically weaker sections through the notion of affirmative action and positive discrimination. These ideas entail that because of the inequality a person is given special help through reservations etc by the government. This is very important in order to ensure that they overcome the disadvantage. Think of the reasoning behind this approach - do you think that we should treat "like" cases alike, and "different" cases differently?

= Article 15 =

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 15 of the Constitution of India is an extension of the more general right to Equality that we saw in Article 14. In India, many people have been discriminated against based on characteristics that they do not have control over -- for instance their race, caste, or gender. This Article prohibits the State from discriminating against anyone only on the basis of their religion, race, caste, sex or place of birth. This implies that no citizen can be denied something or given an advantage only on the basis of these categories. For example, if you were a citizen of India, and were not allowed to go to a certain movie hall only because you were from Gujarat, or ethnically Kashmiri or practiced the Jain religion, or a woman, then this would violate the guarantee you are given under the Article.

Why is this important enough to have as a separate provision? Historically, society in India has had a deeply entrenched caste system, which separated people on the basis of their occupations. Although it was supposed to be a division by occupation, the system became rigid and people were not able to move in between castes.

Not only that, some castes were considered superior to others. This meant that the ones considered inferior were physically not allowed access to many things. Things like places of learning, places of worship, places to get water from were all denied to these people, for no fault of theirs.



Therefore, the first clause places a negative burden on the state to not allow anyone to be discriminated against on the basis of any of the characteristics stated above. What does it mean to be "discriminated against"? It comes into operation if a decision that affects you has been taken on the basis of one of the factors mentioned in the provision, then it can be challenged in the courts.

The second clause applies to every public shop, restaurant, hotel and place of entertainment and states that no person can be denied access to these only

because of their religion, race, caste, sex, place of birth. It also applies to roads and wells that the State has paid for.

Importantly both 15(2) and, as we shall see further on, Article 17, seek to control not just the actions of the State but the actions of all people. This comes from an understanding of how discrimination works - some groups have been historically denied access to public amenities by people more powerful than them.

However there is an even more important burden on the State to remedy the injustice that certain groups of people have faced. Why is this important? There are several reasons for this: because when we came together to form a new nation, it was on the basis of several core ideals. These are enshrined in the Constitution, and are based on the values of equality and fairness.

It is for this reason that the interesting parts of the Article are the third and fourth clauses - which give the State some leeway to make special provisions for women and children, in clause three, and in clause four, for provisions that help in the social advancement of those people who have historically been denied benefits, the so-called "backward classes", or scheduled tribes or schedule castes. Before we discuss what these measures are, let us discuss who these groups of people are. By the term, "scheduled" the Constitution means those groups of people who are in a list made by the Government under the powers given by the Constitution. There are two types of groups of people that are identified in the two lists - castes and tribes. Castes are social groups within the Hindu religion, and those castes that are in the schedule are those that have been, as has been pointed out before, historically discriminated against. The same logic applies to tribes.

Backward classes are any group of people that the State finds to be "socially" or "educationally" backward, i.e. not as developed as the rest of the country. It has been held by the court that the way to determine this is not on the basis of caste, but that the group is socially backward because of poverty.

The third clause also allows the State to make special measures for women and children only because they are female, or because they are children. For example, some of us who take buses notice that some seats are reserved for women. Why is this so? Women were not allowed to take public transport, and ensuring that they get a comfortable place to sit is a factor that can help encourage more women to use public transport.

= Article 16 =

Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

Article 16 deals with equality in matters of public employment. It protects us from discrimination on the basis of religion, race, caste, sex, descent, place of birth or residence in connection with employment to a government or public job.



In India, people have been discriminated based on various characteristics for centuries. For example, people belonging to lower castes or women were not allowed to do certain jobs. This Article ensures that nobody is denied a public/ government job because they belong to a lower caste, a certain religion or race, or for being from a different region or for being a woman. If anyone is denied opportunities in public employment based only on these characteristics, it is a violation of Article 16.

Our country has had a centuries old caste system which created rigid divisions between

occupations. People from lower castes were only permitted to do menial jobs which were considered impure such as manual scavenging or cleaning. They were not allowed to do jobs meant for upper castes, such as teaching or being a part of the priesthood or the government, regardless of their merits, abilities or interests. Similarly, women were also not permitted to work outside of their homes as such jobs were considered to be appropriate only for men. The caste system has been abolished and women play a more active role in society, however, some people still believe in the caste system and the inferiority of women. Therefore, we need this provision to ensure that this belief does not get in the way of a meritorious person's right to employment regardless of what caste, gender, religion, race, place of birth or residence he/ she belongs to.

In fact this provision in our Constitution serves a dual purpose, not only does it protect someone from being denied their right, it also encourages people to change the way they think by declaring that such discrimination is the violation of a fundamental right.

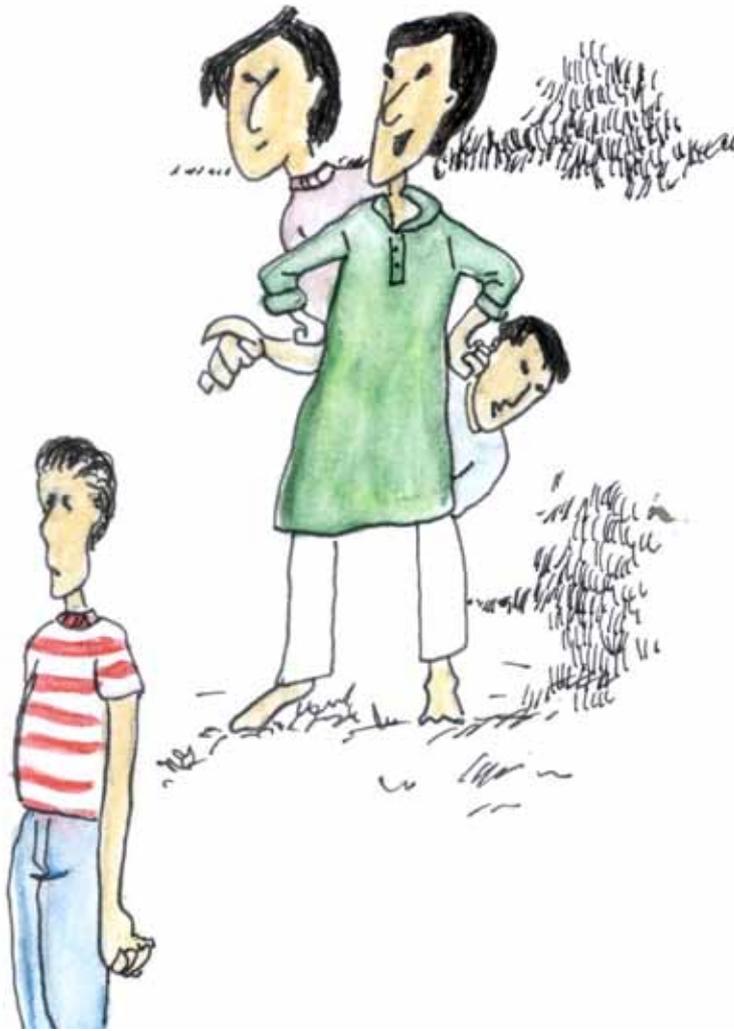
= Article 17 =

“Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.”

Untouchability is a direct outcome of the caste system which was and still is prevalent in our country. People from the lowest class in the caste system were called 'untouchables' as they were considered 'impure' and it was a commonly held belief that these people were not worthy of respect. For many years now, certain jobs considered impure are 'reserved' and imposed upon people from the Dalit, Scheduled Caste and Scheduled Tribe Communities. These jobs include inhuman activities like manual scavenging. While everyone realises that this is an inhumane activity and needs to be abolished, the reality is very different. Approximately 3 lakh people are still involved in manual scavenging.

Article 17 of our Constitution has abolished untouchability and has forbidden its practice in any form and yet it is still practiced without any fear of punishment in large parts of the country. Our Constitution makers so many years ago realized that this practice is a social evil and inserted Article 17 with a view to end this practice, it has however not translated into our everyday lives.

While Article 15 prohibits discrimination in general, the areas covered there such as access to shops, public restaurants, hotels and places of public entertainment are some of the main difficulties faced by the so-called 'untouchables'. However, there can be several more forms of the practice of untouchability and Article 17 seeks to prohibit all such practices. In spite of the safeguard provided in this Article, this abhorrent practice still



continues, more so in rural areas than urban - at the village level Dalits are barred from using public wells and are forbidden from entering temples, while at work, Dalits are made to do the most menial work and are rarely promoted. People from the 'higher castes' do not interact with the Dalits and they are made to eat and reside separately.

The Constitution however empowers the Parliament to make laws prescribing punishment to those to practice untouchability.

We are all equal and no one should have to face a disability because of the family that one is born into. The Government of India passed the Protection of Civil Rights Act in

1955 to help achieve the goal of an equal society. Anyone who practices or preaches untouchability is liable to be punished under the provisions of this Act. Every person is given an equal right to access public places including hotels, places of public entertainment and places of public worship. Since the provisions of the Protection of Civil Rights Act were found to be inadequate and ineffective in curbing the practice of "untouchability", the Government passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989 which provides for strict punishment for its violation. The Act aims to prevent the commission of offences of atrocities against the members of Scheduled Castes and Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offenses.

= Article 18 =

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State

Right to Freedom

At the other end of the spectrum from untouchability is the concept of 'titles'. People with titles such as 'Sir' or 'Knight' before their names were revered. Also the British used to confer titles like 'Bahadur' on persons who were helping them. The use of such titles breeds further inequality.

To attain the objective of a nation of equals, the framers of our Constitution inserted Article 18 which prohibits the Government from conferring any title on any person. The State can however confer titles establishing military and academic distinctions. Further, a citizen of India cannot accept any title from a foreign country.



However, this provision is merely directory and no penalty is prescribed for its infringement.

We must also remember that the Government confers awards called the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri for exceptional service in any field. These awards however cannot be used by the awardee as a title and the Supreme Court has held in 1996 that these awards are not in violation of Article 18.

= Right to Constitutional Remedy =

Now that we know what our rights are, it is also important for us to know our remedies in case this right or any of our other fundamental rights are violated by others.

= Article 32 and 226 =

Article 32 is the Right to Constitutional Remedies. It is also a fundamental right that ensures the enforcement of all other Fundamental Rights in the Constitution. It does this by giving, to anyone whose Fundamental Right has been violated, the power to move the Supreme Court of India to issue directions or orders or formal written orders called 'writs' for the enforcement of any of these Rights.

Our High Courts are also empowered to issue 'writs' for the enforcement of Fundamental Rights under Article 226.



Our Constitution provides for five types of 'writs'- habeas corpus, prohibition, certiorari, mandamus and quo warranto. The 'writ' of 'habeas corpus' requires a person under arrest to be brought before a judge or a court. Thus, it is a remedy against unlawful detention i.e. being kept in prison unlawfully. 'Prohibition' is issued by a higher court to a lower court prohibiting it from taking up a case because it falls outside the jurisdiction of the lower court. The 'writ' of 'certiorari' is also issued by a higher court to a lower court, directing that the record of a case be sent to the higher court, along with all its supporting files and evidence, for review. This can be used for overturning the judgment of the lower court. The 'writ of Mandamus' is an order to any public or government authority commanding the performance of certain duties. For example, every citizen has a right to clean drinking water. It is the duty of the government to provide it. If it is not available, the court can issue a 'writ of mandamus' to the appropriate public authority such as the Ministry of Drinking Water and Sanitation to ensure that clean drinking water is provided. The last 'writ' is 'quo warranto' which is issued by the courts only when someone wrongfully usurps a public office. It requires the person who has usurped the public office to show by what authority he/she supports such a claim to a public office.

Articles 32 and 226 ensure that the rights laid down in Part III of our Constitution are not in vain. They provide us with a mechanism to enforce these rights ourselves with the help of our Courts.

It is important for us to know about these rights and remedies so that we can help enforce them around us and move towards a more equal society.

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